



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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September 10, 2014

MEMORANDUM

SUBJECT: Gorst Landfill RCRA 7003(a) Order to U.S. Navy

FROM: Alex Fidis, Office of Regional Counsel

TO: Rick Albright, Director, Office of Environmental Cleanup

The purpose of this memorandum is to briefly describe the history, basis for and substance of the proposed RCRA 7003(a) Unilateral Administrative Order to the U.S. Navy for the Gorst Creek Landfill located at 4275 State Highway 3 SW in Port Orchard, Washington.

Factual Background

The Gorst Creek Landfill is immediately adjacent to Washington Highway 3, a main access road to the Kitsap Peninsula. In 1968, the owner of the Site, Mr. Mel Marler, began using Gorst Creek Ravine as an unpermitted waste disposal area. To maintain the flow of Gorst Creek through the ravine, Mr. Marler channeled the creek through a 24" steel culvert at the bottom of the ravine and proceeded to dispose of waste material on top of the culvert. Mr. Marler applied to the Kitsap County Health District (KCHD) for a permit to dispose of waste in the ravine and concurrently bid on a contract with the U.S. Navy to dispose of waste from the Puget Sound Naval Station (PSNS) described as 93,000 cubic yards of industrial trash, contaminated garbage, timber and sawdust, and oils, tar and chemicals. KCHD denied the permit application citing, among other concerns, that the culvert would not be able to withstand the weight of waste material disposed in the ravine. Despite not receiving a permit to operate a landfill, the Navy awarded Mr. Marler the waste disposal contract and proceeded to dispose of waste generated from PSNS in the ravine from July 1, 1969 to June 30, 1970. It is believed that during this one-year period the Navy may have generated and disposed of up to half of the estimated 150,000 cubic yards of waste in the ravine.

Following termination of the Navy contract in 1970, the Site continued to operate as a dump until 1989 when it was shut down by KCHD. During this time, available evidence indicates that the landfill received mainly demolition debris and residential waste. Other than the Navy, EPA has not been able to identify any other significant generator of waste.

Endangerment to Health or the Environment

The weight of the waste disposed in the ravine crushed the culvert through which Gorst Creek flows in at least two places. Heavy rainfall events in 1997, 2002 and 2007 resulted in the impoundment of a significant volume of water (up to 40 ft deep) at the upstream culvert entrance. The impounded water flowed through and eventually over top of the landfill causing the downstream slope of the landfill to fail and dispersing waste up to ½ mile downstream. The

KCHD and Washington State Department of Transportation responded to these slope failures to remove debris from the downstream creek environment and to protect State Highway 3.

The likelihood of future landfill slope failures presents an ongoing structural threat to State Highway 3. Specifically, waste material washed downstream in conjunction with water flooding through and over the landfill may block the culvert beneath the highway, resulting in erosion of the highway embankment and potentially flooding the highway. The flooding and erosion of the landfill also presents an ongoing threat to the downstream environment as waste material is washed downstream. In addition, soil and downstream sediment samples have detected an array of hazardous substances from the landfill including PCBs, pesticides, SVOCs and metals. Hazardous substances, pollutants or contaminants that may be present in the landfill are likely released to the downstream environment as impounded water flows through the landfill.

Required Response Action

To address the threat presented by the landfill, the order requires the Navy to conduct a response that involves creating a new ravine to the south of the landfill in order to re-route Gorst Creek around the landfill. The new ravine will be constructed to provide for appropriate fish habitat and vegetation. In addition to re-routing the creek, the order requires permanent closure of the culvert beneath the landfill, stabilization of the landfill slopes, and placement of a soil cover on top of the landfill with appropriate vegetation to protect the cover and prevent erosion.

Navy Involvement at the Site

Following the 1997 slope failure, the Navy worked with Ecology and KCHD to address site conditions. The Navy completed a site investigation, a search for responsible parties and developed response alternatives. In 2001, the Navy terminated its involvement at the Site due to a disagreement with Ecology over the appropriate cleanup levels. In 2002, Ecology and KCHD referred the Site to EPA. EPA completed a preliminary assessment in 2003, an integrated assessment in 2004, and an engineering evaluation and cost analysis in 2012.

In 2009, the EPA notified the Navy that it may be liable under CERCLA. The Navy admits it disposed of waste at the Site but argues that its CERCLA liability has not been established because EPA has no evidence that it disposed of hazardous substances (the Navy was unable to provide relevant documentation because it purportedly lost the site records in a 2006 move). Since 2009, the EPA has provided the Navy with multiple opportunities to participate in a response action, with the most recent communication occurring in April 2014. This last communication informed the Navy that EPA was evaluating its enforcement options under CERCLA and RCRA authorities and requested a written response from the Navy indicating whether it would participate in the response action. The Navy's written response made clear that it did not intend to conduct or contribute to the response action.

Rationale for Excluding Other Responsible Parties

The EPA completed a search for responsible parties in 2010 but was unable to identify other responsible parties capable of conducting or participating in the response action. Below is a summary of identified responsible parties.

- *Mr. Mel Marler and Ames Auto Wrecking, Inc.* – Mr. Marler owned the Site and his business Ames Auto Wrecking operated at the Site. Mr. Marler is deceased and Ames Auto Wrecking was dissolved with no corporate successor.
- *Mr. William Niles and the ST Trust* – Mr. Niles purchased the Site in 2002 at a tax foreclosure sale, and subsequently transferred ownership to the ST Trust, a trust established for the benefit of Mr. Niles' two grandchildren. The ST Trust currently owns the Site and the property is the only Trust asset. Although Mr. Niles and the ST Trust have cooperated in providing access and information, it appears that neither have the financial ability to conduct the necessary response action, although they may be able to contribute some nominal funding.
- *Mr. Earl King* – Mr. King owned the Site between 1973 and 1992 and operated the Site between 1973 and 1980. Mr. King is 85 years old and at the time of EPA's last communication was living on fixed income in Idaho and undergoing cancer treatment. Mr. King does not have the financial ability to conduct or participate in the necessary response action, although he may be able to contribute some nominal funding.
- *Lucille Uhnick* – Ms. Uhnick acquired ownership of the Site in 1992, and she and her husband (deceased) operated the Site from 1980 until it was closed in 1989. Ms. Uhnick owned the Site in 1997 when the first landfill slope failure occurred. Ms. Uhnick does not have the financial ability to conduct or participate in the necessary response action, although she may be able to contribute some nominal funding.
- *Waste Management of Washington* – Waste Management is the successor to Brem-Air Disposal, Inc. which had a contract to dispose of waste at the landfill in the 1970s. Documentation provided by Waste Management proves that the purpose of this contract was to secure an auxiliary disposal location which the company never actually used.

Issuance of Order

RCRA 7003(a) requires that EPA provide notice to the affected state prior to issuing the Order. A state notification letter to Maia Bellon, Director of the Washington State Department of Ecology, is included with the concurrence package and will be sent out prior to EPA's issuance of the final order. In accordance with the communication plan, the ECL Director and Unit Manager will provide verbal notice of the order to their respective counterparts at Ecology.

RCRA 6001(b) requires that EPA provide an opportunity to confer before an administrative order issued to the Navy becomes effective. The Gorst Order provides the Navy with a 10 day period after receipt of the Order to request a conference. The conference responsibility has been delegated to the Assistant Administrator for OECA. If no conference is requested the Order becomes effective 11 days after receipt by the Navy. If conference is requested the Order will become effective 5 days after the Assistant Administrator issues a written determination following completion of the conference. The conference may result in changes to the Order or the work required under the Order.